



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

May 8, 1947

Hon. C. E. Patterson
County Attorney
Brewster County
Alpine, Texas

Opinion No. V-193

Re: Taxation of wool in gov-
ernment warehouses on
consignment from ranchers.

Dear Mr. Patterson:

You present for the opinion of this Department in your letter of April 15, 1947, the question of whether or not wool in Federal Government Warehouses as of January 1st is subject to ad valorem taxes for that year; and, if so, upon whom the duty rests to render and pay the taxes, i.e., whether the rancher who produced and consigned the wool to the warehouse or the warehouseman.

Whether the wool under the circumstances covered by your letter is the property of the producer, the rancher, or the government warehouse involves an issue of fact which is beyond our province to pass upon and which we will not attempt to resolve. We will assume, however, for the purpose of this opinion, that the wool remains the property of the producer until it is appraised and in fact sold at a price mutually agreed upon between the producer and the Federal Government.

Based upon this assumption, we are of the opinion that until such sale is consummated the wool remains in the hands of the producer and is a farm product specifically exempt from taxation by virtue of Article VIII, Section 19, of the State Constitution adopted in 1879, which reads as follows:

"Farm products in the hands of the producer, and family supplies for home and farm use, are exempt from all taxation until otherwise directed by a two-thirds vote of all the members elect to both houses of the Legislature. (Sec. 19, Art. 8, adopted election first Tuesday in September, 1879; proclamation October 14, 1879.)"

We think that wool does constitute a "farm product", and its storage in a government warehouse pending ultimate sale does not preclude its being "in the hands of the producer".

Literally, farming means the tillage or cultivation of the soil. But, as said by the court in the case of Dorothy Keeney vs. Frank B. Besman (Maryland Court of Appeals), 182 Atl. 566; 103 A.L.R. 1515: "Like many words compounded of different elements, it has the meaning of its own broader than that of the elements considered separately; for from time immemorial it has been regarded as synonymous with husbandry, and includes, not only the cultivation of the soil and the raising of crops, but also gathering in the crops and raising livestock. . . and as a natural concomitant of those activities, marketing of the products of the soil, the increase and the products yielded by the stock, such as wool and milk. That has been so from the earliest times." (Emphasis added)

We continue to quote from this case as follows: "But, where the milk sold is produced by cattle kept on the farm as a part of its operation, the business of producing and selling it is necessarily an agricultural pursuit, for the production of milk from cattle which consume the crops grown on the farm is as clearly an agricultural pursuit as raising sheep for their wool. . ." (Emphasis added) In Davis vs. Industrial Commission (Supreme Court of Utah), 206 Pac. 267, a sheep herder was held to be an agricultural laborer. In a Texas case, Hill v. Georgia Casualty Co. (Tex. Commission of Appeals), 45 S.W. (2d) 566, it was held that one employed at a nursery for the propagation of trees, vines shrubs, etc., was an agricultural laborer, and as a necessary corollary we think it follows that a ranchman engaged in raising sheep for the production and sale of wool is producing an agricultural or farm product. As long as such wool remains unsold by the ranchman it is a farm product in his hands and as such is specifically exempt under the foregoing provision of the Constitution.

The Legislature has never by two-thirds vote of all members of both Houses imposed a tax upon farm products "in the hands of the producer".

This constitutional exemption from taxation would not apply to wool that has passed out of the hands

of the producer by sale or otherwise, for it is exempt only "in the hands of the producer". If in fact the wool has passed out of the hands of the producer by sale to the Federal Government, then it would not be taxable unless Congress has specifically permitted the State to tax it. The State has no authority to tax property owned by the Federal Government so long as it insists upon its immunity.

If we assume that there has been a completed sale and the wool has in fact become the property of the Federal Government and as such continued in storage in the Federally owned warehouses, we know of no Congressional action waiving the immunity of the Federal Government from State taxation under such circumstances.

If, however, a sale of the wool has been made to a purchaser not itself entitled to claim immunity from taxation, a different rule would apply and tax liability would begin as in the case of any other personal property, for it would no longer be "in the hands of the producer" as provided by Article VIII, Section 19 of the Constitution.

SUMMARY

Wool stored in Federal Government warehouses by ranchmen, but not actually sold, is specifically exempt from ad valorem taxes by virtue of Article VIII Section 19 of the Constitution of this State, as a farm product in the hands of the producer. If it actually has been sold to the Federal Government, it is not subject to ad valorem taxes by this State, in the absence of Congressional action permitting it.

Yours very truly,

APPROVED MAY 9, 1947

ATTORNEY GENERAL OF TEXAS

Price Daniel
ATTORNEY GENERAL

By

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